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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS DWAYNE KING,

Defendant and Appellant.

2d Crim. No. B208216
(Super. Ct. No. VA104369)
(Los Angeles County)

Marcus Dwayne King appeals a judgment of conviction following his guilty plea to forgery, with admissions that he suffered a prior serious felony conviction and served a prior prison term. (§§ 476, 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)¹ We remand for a determination of King's ability to pay an attorney's fees reimbursement order and the actual amount of attorney's fees incurred, but otherwise affirm.

FACTS AND PROCEDURAL HISTORY

In November 2007, King passed two forged checks at a liquor store in Los Angeles. By information, the prosecutor charged him with two counts of forgery and two counts of commercial burglary. The prosecutor also alleged that King suffered two prior serious felony convictions and served a prior prison term. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) On May 2, 2008, King received advice concerning his

¹ All further statutory references are to the Penal Code.

constitutional rights and waived them. He pleaded guilty to one count of forgery. (§ 476.) He also admitted the sentencing allegations.

The trial court sentenced King to 44 months of imprisonment pursuant to a plea agreement. It doubled the low term of 16 months for forgery and added 12 months for the service of a prior prison term. The trial court ordered King to pay a restitution fine, parole revocation restitution fine, and court security fee. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a)(1).) It awarded King 132 days of presentence custody credit, and dismissed the remaining counts and allegations.

During the sentencing hearing, the trial court inquired if King's attorney was retained or court-appointed. The attorney responded that he was appointed counsel from the attorney panel. The court then ordered that King pay attorney fees of \$1,271.57, "according to [his] ability to pay." The attorney protested without success that the "guideline amount is much more than I've actually billed or will bill."

King appeals and challenges the reimbursement order.

DISCUSSION

King argues that the trial court did not provide notice or a hearing regarding the attorney's fee reimbursement. (§ 987.8, subd. (b) ["[T]he court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost [of appointed legal representation]"; *People v. Poindexter* (1989) 210 Cal.App.3d 803, 809-810 [notice and hearing required prior to attorney's fee reimbursement order].) He adds that the court did not consider his present ability to pay the fees, or the actual amount of fees. King points out that he received a 44-month term of imprisonment. (§ 987.8, subd. (g)(2)(B) ["Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense"]; *People v. Flores* (2003) 30 Cal.4th 1059, 1068 ["[T]here is a presumption under [section 987.8] that a defendant sentenced to prison does not have the ability to reimburse defense costs"].)

Section 987.8 permits the trial court to order a criminal defendant to reimburse the county for the costs of court-appointed counsel. Section 987.8, subdivision (b) requires

the court to provide notice and a hearing to determine defendant's present ability to pay all or a portion of the actual costs of counsel. Here King received notice in his written plea form that "[t]he Court will also order me to pay statutory fees and other assessments." King wrote his initials beside this statement and acknowledged at the sentencing hearing that he completed the written plea form with the assistance of his attorney. Moreover, King did not object to the reimbursement order on grounds of notice or lack of preparation. (*People v. Phillips* (1994) 25 Cal.App.4th 62, 75.) He may not raise the issue of notice on appeal. (*Ibid.*; *People v. Cruz* (1989) 209 Cal.App.3d 560, 564.)

The Attorney General concedes, however, that the trial court improperly ordered attorney's fees without determining the actual amount of fees incurred or King's ability to pay. The Attorney General points out that probation report indicates that King was employed at the time of his arrest, and therefore may have the present ability to pay his attorney's fees. We agree.

We remand the matter for a determination of the actual cost of the attorney's fees incurred, and King's ability to pay all or a portion of the fees. The judgment is otherwise affirmed.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Roger Ito, Judge

Superior Court County of Los Angeles

Carlo Andreani, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, Tita Nguyen, Deputy Attorney General, for Plaintiff and Respondent.